THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO.1766 OF 2005

O R D E R:

This writ petition has been filed assailing the order, dated 24.01.2005 passed by the Joint Collector (ROR) Karimnagar in File No.D1/7433/04 dated 24.01.2005 as illegal.

The petitioners claim that they inherited the land bearing S.No.171 measuring 8.03 acres situated at Gunjapadugu Village, Manthani Mandal, Karimnagar District. They presented an application before the Mandal Revenue Officer, Manthani for grant of Pattadar Pass Book and Title Deed under the provisions of Andhra Pradesh Rights in Land & Pattadar Pass Books Act, 1971 (for short 'the Act'). The Mandal Revenue Officer by order, dated 20.02.2004 allowed the application dated 10.11.2003 and granted Pattedar Pass Books and Title Deeds in their favour in respect of S.No.171 admeasuring 8.03 Acres. Respondent Nos. 5 & 6 claim to be the purchasers of the property in the year 1957 from Racherla Seethaian, who is the grand father of the petitioners herein filed an appeal before the Revenue Divisional Officer. The appellate authority considered the material brought on record and did not find any reason to interfere with the order passed by the Mandal Revenue Officer and accordingly dismissed the appeal. Thereupon, respondent Nos. 5 and 6 filed a revision before the District Collector (ROR) Karimnagar. The revisional authority on elaborate discussion of various points urged before him, set aside the orders of the Mandal Revenue Officer as well as the Revenue Divisional Officer and remanded the matter back to the primary authority (Mandal Revenue Officer, Manthani, Karimnagar District) with a direction to conduct a detailed enquiry after giving notices to the parties and pass appropriate orders. The relevant portion of the order passed by the Revisional Authority i.e., (District Collector (ROR) Karimnagar reads

as follows:

> "*Examined the records of lower authority and written arguments produced by both the parties. The dispute is in respect of Sy.No.171 dry measuring (8-03) acres situated at Gunjapadugu Village of Manthani Mandal between the parties. On perusal of the record in file No.B/798/2003 of Mandal Revenue Officer, Manthani, it is evident that on receipt of application from Racherla Laxmi Narasaiah dated 10.11.2003, the Mandal Revenue Officer issued notices to the concerned legal heirs of the deceased only and finalized the case in favour of the Respondents. No notices have been given to the representations submitted by Sri Indarapu Lingaiah, Pochaiah and Gattu Dattaiah R/o. Gunjapadugu Village on 24.07.2004. Further, the physical possession over the land under dispute by the petitioners and others for a period of (40) years from 1962-63 to 2002-03 is not verified with the adjoining pattedars/enjoyers of S.No.171 mesuring (8.03) acres. The appellate authority is also followed the same and confirmed the orders of the lower authority giving the reasons that the Petitioners have failed to submit the documentary evidence in support of their claim in file No.A/833/04 dated 07.12.2004.*
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> *In view of the above, it is decided to remand the case to the Lower authority for conducting detailed enquiry, giving the notices to the parties afresh and pass appropriate orders within a period of one month from the date of order."*

Assailing the order of the revisional authority, the petitioners filed this writ petition invoking jurisdiction under Article 226 of the Constitution of India.

Respondent Nos. 5 & 6 filed counter affidavit. It is stated in the counter affidavit that grand-father of the petitioners Racherla Seethaiah died 30 years back and father of the petitioners Rajaveeru died about 25 years back. It is further averred that Gattu Narsaiah purchased the land in the year 1957 and his name is entered in the revenue records as purchaser. I deem it appropriate to refer para-4 of the counter affidavit and it reads as thus:

> *"In reply to para 2 of the affidavit, it is submitted that the grand father of the petitioners i.e., Raacherla Seethaiah died about 30 years back and father of petitioners i.e., Rajaveeru died about 25 years and whereas admittedly*

the application for mutation of the names of petitioners was filed on 10.11.2003 i.e., after a period of 30 years which is hopelessly time barred. The revenue records clearly show that our father late Mr.Gattu Narasaiah purchased the land in the year 1957 and his name is entered in the Revenue records as purchaser. The name of our father Gattu Narsaiah and after his death our names are continuously in existence. I submit that this fact is known and in the knowledge of writ petitioners since last three decades as such even otherwise we have perfected title by adverse possession".

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent Nos. 5 & 6.

The learned counsel for the petitioners submits that the reasons assigned for remanding the matter back by the revisional authority to the primary authority are not legal and proper. He further submits that individual notices to the affected parties is not required under R.O.R. proceedings. It is enough if a publication is given in the village with regard to the application filed for granting necessary certificate under R.O.R. Act. Reliance has been placed on a decision reported in ***B.G.LAXMAN (DIED) PER L.Rs. VS. JOINT COLLECTOR, R.R.DISTRICT AND OTHERS.*** In para 10 of the judgment it was observed as follows:

"It is true that the Mandal Revenue Officer who is the primary authority on receipt of intimation of the fact of acquisition of any right referred to under Section 4, before directing mutation of entries, is required to issue notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected by the amendment and to any other persons whom he has reason to believe to be interested therein or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. What sub-sec (3) mandates is undoubtedly issuance of notice to all persons who may be having right or interest in the land in question in respect of which mutation is sought. The Legislature itself has not prescribed any particular mode of service in sub-section (3) of Section 5 of the Act. No other provisions of the Act were brought to our notice by the learned counsel who argued

before us which prescribe any particular mode of notice to be served under sub-section (3) of Section 5 of the Act. In the absence of such prescription by the lawmaker itself, the Governor of Andhra Pradesh in exercise of the powers conferred by sub-section (1) of Section 11 of the Act has framed the Rules. Rule 19 of the Rules reads as follows:

1. *The notice referred to in sub-section (3) of Section 5 of the Act shall be in Form VIII.*

2. *Such notice together with a copy of the amendment shall also be published in the manner specified in clauses (a) to (e) of sub-rule (2) of Rules 5."*

Should it be noticed that the validity of Rule 19 is not assailed in the present writ petition. Therefore, we should take that Rule 19 is valid and it is made in accordance with the rule-making power conferred on the Governor. Therefore, the only question to be considered is whether the procedure prescribed under Rule 19 of the Rules has been adhered to by the Mandal Revenue Officer before he passed the impugned order under sub-section (1) of Section 5 of the Act directing mutation of entries in favour of respondents 4 to 7. Sub-rule (1) of Rule 19 mandates that the notice that is required to be issued under sub-section (3) of Section 5 of the Act should be in Form-VIII. Form-VIII prescribed under Rule 19(1) reads as follows:

FORM-VIII

NOTICE

Whereas the undersigned has received an intimation of the fact of acquisition of a right as described in the schedule hereunder and it appears that an amendment has to be made in the Record of Rights in consequence thereof……..

And/or

Whereas the Recording Authority has reason to believe that an acquisition of a right has taken place as described in the schedule hereunder and it appears that amendment has to be made in the Record of Rights in consequence thereof.

Now, therefore, under sub-sec. (3) of Section 5 of the Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971.

All persons interested or affected are hereby required to show cause on or before …….(date to be specified not being earlier than 30 days from the service/publication of the notice) as to why the amendment should not be carried out.

You

…… …….. ……..

……..

All persons interested or affected are also required to appear before the undersigned on …….(date not earlier than forty five days from the service/publication of the date of notice) at …….(place)…….. (time) in connection with the enquiry proposed to be held in respect of the above matter.

…….……

Recording Authority".

The learned counsel appearing for respondent Nos. 5 & 6 submits that the revisional authority remanded the matter back on two grounds. Firstly, no notice has been given to Indarapu Lingaiah, Pochaiah and Gattu Dattaiah, who are the rival claimants and whose representation dated 24.07.2004 was pending. Secondly, the entries in the Revenue Records for a period of 40 years i.e., from 1962-63 to 2002-03 were not taken into account.

The revisional authority narrated the history of the case in great detail and answered various points urged before him. The plea of respondents 5 and 6 is that their father purchased the property in the year 1957 and since then their names and their father's name have been reflected in the revenue records. Since the primary authority and the appellate authority failed to take note of the entries from 1962-63 to 2002-03, the revisional authority remanded the matter back to the primary authority for taking a considerable decision.

In such a situation, I do not find any valid reason to interfere with the order of the revisional authority. Both the parties are at liberty to adduce evidence before the primary authority in support of the respective contentions.

Accordingly the writ petition is dismissed. No costs.

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B.SESHASAYANA REDDY J.,

Dt.20.08.2005

c.c.in one week

B/o

tjs

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